

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1588

Introduced by Assembly Member Soto

February 23, 2007

~~An act to amend Section 960.4 of the Government Code, relating to claims against public entities. An act to amend Section 320.5 of the Penal Code, relating to raffles.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1588, as amended, Soto. ~~Local public entities: claims: service of process. Raffles: gross receipts.~~

The California Constitution authorizes the Legislature to permit private, nonprofit organizations to conduct raffles as a funding mechanism to support beneficial and charitable works, if, among other conditions, at least 90% of the gross receipts from the raffle go directly to beneficial or charitable purposes in California. The California Constitution further authorizes the Legislature to amend the percentage of gross receipts required to be dedicated to beneficial or charitable purposes by a statute passed by a $\frac{2}{3}$ vote of each house of the Legislature. Existing statutory law requires the Department of Justice to administer and enforce those provisions.

This bill would decrease the percentage of gross receipts from charitable raffles required to go to beneficial or charitable purposes from 90% to 50% for a 50/50 cash raffle, as defined, and from 90% to 60% for a dream home raffle, as defined. It would place certain restrictions on any noncash prize purchased in connection with a dream home raffle. The bill would also make other technical, nonsubstantive changes to those statutory provisions.

Because the bill would revise the percentage of gross receipts required to go to beneficial or charitable purposes pursuant to the California Constitution, this bill would require a $\frac{2}{3}$ vote of each house.

~~Existing law requires that specified claims against local public agencies be presented in accordance with certain requirements, including requirements relating to service of process. Existing law requires that copies of an order authorizing service of process on a local public agency be mailed to the Secretary of State in certain circumstances. Existing law requires that, upon receipt of the copies of process pursuant to these provisions, the Secretary of State give notice of the service of the process to the governing body of the public agency at its principal office by forwarding to the office a copy of the process, and immediately forward to the Attorney General a copy of all papers served upon him or her.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: ~~majority~~ $\frac{2}{3}$. Appropriation: no. Fiscal committee: ~~no~~yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 320.5 of the Penal Code is amended to*
- 2 *read:*
- 3 320.5. (a) Nothing in this chapter applies to any raffle
- 4 conducted by an eligible organization as defined in subdivision
- 5 ~~(e)~~ (b) for the purpose of directly supporting beneficial or charitable
- 6 purposes or financially supporting another private, nonprofit,
- 7 eligible organization that performs beneficial or charitable purposes
- 8 if the raffle is conducted in accordance with this section.
- 9 (b) For purposes of this section, ~~“raffle”~~:
- 10 (1) *“Beneficial purposes” excludes purposes that are intended*
- 11 *to benefit officers, directors, or members, as defined by Section*
- 12 *5056 of the Corporations Code, of the eligible organization.*
- 13 (2) *“Dream home raffle” means a raffle in which the value of*
- 14 *the grand prize is at least seven hundred fifty thousand dollars*
- 15 *(\$750,000) in money or tangible property and in which any*
- 16 *noncash prize purchased by the eligible organization complies*
- 17 *with subdivision (c).*
- 18 (3) *“Eligible organization” means a private, nonprofit*
- 19 *organization that has been qualified to conduct business in*
- 20 *California for at least one year prior to conducting a raffle and*

1 *is exempt from taxation pursuant to Section 23701a, 23701b,*
2 *23701d, 23701e, 23701f, 23701g, 23701k, 23701l, 23701t, or*
3 *23701w of the Revenue and Taxation Code.*

4 (4) “50/50 cash raffle” means a raffle that is conducted by the
5 eligible organization itself without the assistance of any
6 professional organization, and is advertised as having a cash prize
7 equal to a specific portion of the funds raised by selling tickets at
8 a single event that lasts no more than 24 hours.

9 (5) “Raffle” means a scheme for the distribution of prizes by
10 chance among persons who have paid money for paper tickets that
11 provide the opportunity to win these prizes, ~~where in which~~ all of
12 the following are true:

13 ~~(1)~~

14 (A) Each ticket is sold with a detachable coupon or stub, and
15 both the ticket and its associated coupon or stub are marked with
16 a unique and matching identifier.

17 ~~(2)~~

18 (B) Winners of the prizes are determined by draw from among
19 the coupons or stubs described in ~~paragraph (1)~~ subparagraph (A)
20 that have been detached from all tickets sold for entry in the draw.

21 ~~(3)~~

22 (C) The draw is conducted in California under the supervision
23 of a natural person who is 18 years of age or older.

24 ~~(4) (A)~~

25 (D) *One of the following is true:*

26 (i) At least 90 percent of the gross receipts generated from the
27 sale of raffle tickets for any given draw are used by the eligible
28 organization conducting the raffle to benefit or provide support
29 for beneficial or charitable purposes, or it may use those revenues
30 to benefit another private, nonprofit organization, provided that
31 an organization receiving these funds is itself an eligible
32 organization as defined in *this* subdivision ~~(e)~~. ~~As used in this~~
33 ~~section, “beneficial purposes” excludes purposes that are intended~~
34 ~~to benefit officers, directors, or members, as defined by Section~~
35 ~~5056 of the Corporations Code, of the eligible organization.~~

36 (ii) *If the raffle is a dream home raffle, at least 60 percent of*
37 *the gross receipts generated from the sale of raffle tickets for any*
38 *given draw are used by the eligible organization conducting the*
39 *raffle to benefit or provide support for beneficial or charitable*
40 *purposes, or it may use those revenues to benefit another private,*

1 nonprofit organization, if the organization receiving these funds
2 is itself an eligible organization as defined in this subdivision. The
3 balance of the funds may be spent in the raffle in which they are
4 collected or held to purchase prizes or cover administrative
5 expenses in any subsequent raffle that qualifies under this clause.

6 (iii) If the raffle is a 50/50 cash raffle, at least 50 percent of the
7 gross receipts generated from the sale of raffle tickets for any given
8 draw are used by the eligible organization conducting the raffle
9 to benefit or provide support for beneficial or charitable purposes,
10 or those revenues are used by the organization to benefit another
11 private, nonprofit organization that is itself an eligible organization
12 as defined in this subdivision.

13 (c) Any noncash prize purchased for a dream home raffle shall
14 be purchased in accordance with one of the following:

15 (1) From a supplier, retailer, or other source not affiliated with
16 the organization or any of its officers, directors, or members.

17 (2) From a supplier, retailer, or other source affiliated with the
18 organization or any of its officers, directors, or members if the
19 cost to the eligible organization is the same as the cost to the
20 affiliated supplier, retailer, or other source.

21 (d) In no event shall funds raised by raffles conducted pursuant
22 to this section be used to fund any beneficial, charitable, or other
23 purpose outside of California. This section does not preclude an
24 eligible organization from using funds from sources other than the
25 sale of raffle tickets to pay for the administration or other costs of
26 conducting a raffle.

27 ~~(B)~~

28 (e) An employee of an eligible organization who is a direct
29 seller of raffle tickets shall not be treated as an employee for
30 purposes of workers' compensation under Section 3351 of the
31 Labor Code if the following conditions are satisfied:

32 ~~(i)~~

33 (1) Substantially all of the remuneration (whether or not paid
34 in cash) for the performance of the service of selling raffle tickets
35 is directly related to sales rather than to the number of hours
36 worked.

37 ~~(ii)~~

38 (2) The services performed by the person are performed pursuant
39 to a written contract between the seller and the eligible organization
40 and the contract provides that the person will not be treated as an

1 employee with respect to the selling of raffle tickets for workers'
2 compensation purposes.

3 ~~(C) For purposes of this section, employees~~

4 *(f) Employees* selling raffle tickets shall be deemed to be direct
5 sellers as described in Section 650 of the Unemployment Insurance
6 Code as long as they meet the requirements of that section.

7 ~~(e) For purposes of this section, "eligible organization" means~~
8 ~~a private, nonprofit organization that has been qualified to conduct~~
9 ~~business in California for at least one year prior to conducting a~~
10 ~~raffle and is exempt from taxation pursuant to Sections 23701a,~~
11 ~~23701b, 23701d, 23701e, 23701f, 23701g, 23701k, 23701l, 23701t,~~
12 ~~or 23701w of the Revenue and Taxation Code.~~

13 ~~(d)~~

14 *(g)* Any person who receives compensation in connection with
15 the operation of the raffle shall be an employee of the eligible
16 organization that is conducting the raffle, and in no event may
17 compensation be paid from revenues required to be dedicated to
18 beneficial or charitable purposes.

19 ~~(e)~~

20 *(h)* No raffle otherwise permitted under this section may be
21 conducted by means of, or otherwise utilize, any gaming machine,
22 apparatus, or device, whether or not that machine, apparatus, or
23 device meets the definition of slot machine contained in Section
24 330a, 330b, or 330.1.

25 ~~(f)~~

26 *(i)* No raffle otherwise permitted under this section may be
27 conducted, nor may tickets for a raffle be sold, within an operating
28 satellite wagering facility or racetrack inclosure licensed pursuant
29 to the Horse Racing Law (Chapter 4 (commencing with Section
30 19400) of Division 8 of the Business and Professions Code) or
31 within a gambling establishment licensed pursuant to the Gambling
32 Control Act (Chapter 5 (commencing with Section 19800) of
33 Division 8 of the Business and Professions Code). A raffle may
34 not be advertised, operated, or conducted in any manner over the
35 Internet, nor may raffle tickets be sold, traded, or redeemed over
36 the Internet. For purposes of this section, advertisement shall not
37 be defined to include the announcement of a raffle on the Web site
38 of the organization responsible for conducting the raffle.

39 ~~(g)~~

1 (j) No individual, corporation, partnership, or other legal entity
2 shall hold a financial interest in the conduct of a raffle, except the
3 eligible organization that is itself authorized to conduct that raffle,
4 and any private, nonprofit, eligible organizations receiving financial
5 support from that charitable organization pursuant to subdivisions
6 (a) and (b).

7 ~~(h)~~—

8 (k) (1) An eligible organization may not conduct a raffle
9 authorized under this section, unless it registers annually with the
10 Department of Justice. The department shall furnish a registration
11 form via the Internet or upon request to eligible nonprofit
12 organizations. The department shall, by regulation, collect only
13 the information necessary to carry out the provisions of this section
14 on this form. This information shall include, but is not limited to,
15 the following:

16 (A) The name and address of the eligible organization.

17 (B) The federal tax identification number, the corporate number
18 issued by the Secretary of State, the organization number issued
19 by the Franchise Tax Board, or the California charitable trust
20 identification number of the eligible organization.

21 (C) The name and title of a responsible fiduciary of the
22 organization.

23 (2) The department may require an eligible organization to pay
24 an annual registration fee of ten dollars (\$10) to cover the actual
25 costs of the department to administer and enforce this section. The
26 department may, by regulation, adjust the annual registration fee
27 as needed to ensure that revenues willfully offset, but do not
28 exceed, the actual costs incurred by the department pursuant to
29 this section. The fee shall be deposited by the department into the
30 General Fund.

31 (3) The department shall receive General Fund moneys for the
32 costs incurred pursuant to this section subject to an appropriation
33 by the Legislature.

34 (4) The department shall adopt regulations necessary to
35 effectuate this section, including emergency regulations, pursuant
36 to the Administrative Procedure Act (Chapter 3.5 (commencing
37 with Section 11340) of Part 1 of Division 3 of Title 2 of the
38 Government Code).

39 (5) The department shall maintain an automated data base of
40 all registrants. Each local law enforcement agency shall notify the

1 department of any arrests or investigation that may result in an
2 administrative or criminal action against a registrant. The
3 department may audit the records and other documents of a
4 registrant to ensure compliance with this section.

5 (6) Once registered, an eligible organization must file annually
6 thereafter with the department a report that includes the following:

7 (A) The aggregate gross receipts from the operation of raffles.

8 (B) The aggregate direct costs incurred by the eligible
9 organization from the operation of raffles.

10 (C) The charitable or beneficial purposes for which proceeds
11 of the raffles were used, or identify the eligible recipient
12 organization to which proceeds were directed, and the amount of
13 those proceeds.

14 (7) The department shall annually furnish to registrants a form
15 to collect this information.

16 (8) The registration and reporting provisions of this section do
17 not apply to any religious corporation sole or other religious
18 corporation or organization that holds property for religious
19 purposes, to a cemetery corporation regulated under Chapter 19
20 (*commencing with Section 9600*) of Division 3 of the Business and
21 Professions Code, or to any committee as defined in Section 82013
22 *of the Government Code* that is required to and does file any
23 statement pursuant to the provisions of Article 2 (*commencing*
24 *with Section 84200*) of Chapter 4 of Title 9 *of the Government*
25 *Code*, or to a charitable corporation organized and operated
26 primarily as a religious organization, educational institution,
27 hospital, or a health care service plan licensed pursuant to Section
28 1349 of the Health and Safety Code.

29 ~~(i)~~

30 (l) The department may take legal action against a registrant if
31 it determines that the registrant has violated this section or any
32 regulation adopted pursuant to this section, or that the registrant
33 has engaged in any conduct that is not in the best interests of the
34 public's health, safety, or general welfare. Any action taken
35 pursuant to this subdivision does not prohibit the commencement
36 of an administrative or criminal action by the Attorney General,
37 a district attorney, city attorney, or county counsel.

38 ~~(j)~~

39 (m) Each action and hearing conducted to deny, revoke, or
40 suspend a registry, or other administrative action taken against a

1 registrant shall be conducted pursuant to the Administrative
2 Procedure Act (Chapters 4.5 and 5 (commencing with Section
3 11340) of Part 1 of Division 3 of Title 2 of the Government Code).
4 The department may seek recovery of the costs incurred in
5 investigating or prosecuting an action against a registrant or
6 applicant in accordance with those procedures specified in Section
7 125.3 of the Business and Professions Code. A proceeding
8 conducted under this subdivision is subject to judicial review
9 pursuant to Section 1094.5 of the Code of Civil Procedure.

10 ~~(k)~~—

11 (n) The Department of Justice shall conduct a study and report
12 to the Legislature by December 31, 2003, on the impact of this
13 section on raffle practices in California. Specifically, the study
14 shall include, but not be limited to, information on whether the
15 number of raffles has increased, the amount of money raised
16 through raffles and whether this amount has increased, whether
17 there are consumer complaints, and whether there is increased
18 fraud in the operation of raffles.

19 ~~(l)~~—

20 (o) This section shall become operative on July 1, 2001.

21 ~~(m)~~—

22 (p) A raffle shall be exempt from this section if it satisfies all
23 of the following requirements:

24 (1) It involves a general and indiscriminate distributing of the
25 tickets.

26 (2) The tickets are offered on the same terms and conditions as
27 the tickets for which a donation is given.

28 (3) The scheme does not require any of the participants to pay
29 for a chance to win.

30 ~~SECTION 1. Section 960.4 of the Government Code is~~
31 ~~amended to read:~~

32 ~~960.4. Upon receipt of the copies of process pursuant to Section~~
33 ~~960.3, the Secretary of State shall give notice of the service of the~~
34 ~~process to the governing body of the public agency at its principal~~
35 ~~office in this state, by forwarding to the office, by registered mail~~
36 ~~with request for return receipt, a copy of the process. If the only~~
37 ~~address disclosed by the records of the Secretary of State of the~~
38 ~~principal office of the governing body of the public agency is the~~
39 ~~county in which it is situated, then the process shall be mailed to~~
40 ~~the county seat, addressed to the public agency in care of the county~~

1 clerk, or it may be mailed to any address for the public agency
2 specified in the court order. If the process is mailed in care of the
3 county clerk, the county clerk shall promptly send it to the public
4 agency at its address within the county, if known to him or her,
5 and if unknown shall cause the process to be posted at the
6 courthouse of the county for 30 days. If the records of the Secretary
7 of State disclose no address for the public agency, then the
8 Secretary of State shall mail a copy of the process to the county
9 clerk of either (a) the county in which the transaction or occurrence
10 took place, or (b) the county where real property of the agency is
11 situated, and the county clerk shall promptly send the process to
12 the public agency at its address within the county, if known to him
13 or her, or if unknown shall cause the process to be posted at the
14 courthouse of the county for 30 days.

15 Upon receipt of those copies of process, the Secretary of State
16 shall immediately forward to the Attorney General a copy of all
17 papers served upon him or her. The Attorney General, upon receipt
18 of any such process, may locate the responsible officers of the
19 public agency involved, and the governing body of the public
20 agency may relieve the Attorney General of any further
21 responsibility under this section, and may designate any other
22 attorneys to defend the action or take any other action that they
23 may determine.

24
25
26 CORRECTIONS:

27 Text—Pages 2, 3, 4, 5, 6, 7, and 8.
28